

OPINION NUMBER 86-6

DATE: December 4, 1986

SUBJECT: Scope of the Civil Service Commission's
Authority to Conduct Investigations
Pursuant to Charter Section 128

REQUESTED BY: Margaret Sellers, President - Civil
Service Commission of The City of San
Diego

PREPARED BY: John M. Kaheny, Deputy City Attorney
QUESTION PRESENTED

You have asked this office for an opinion defining the scope of the Civil Service Commission's authority to conduct investigations pursuant to Charter section 128.

CONCLUSION

1. The Civil Service Commission or any person designated by it may make an investigation concerning the facts in respect to the operation and enforcement of the Civil Service Provisions of the Charter (article VIII, sections 115 et seq.), of the rules established under them (Civil Service Rules I through XVII; San Diego Municipal Code, chapter II, article 3, section 23.0101 et seq.) and the provisions of the regulations adopted by the Commission pursuant to those rules. (Personnel Manual of The City of San Diego, San Diego Municipal Code section 23.1603.)

2. The Civil Service Commission has a duty to investigate, or cause to be investigated, written charges of misconduct or inefficiency against any officer or employee in the classified service which have been filed with the Personnel Director by any person.

3. The Civil Service Commission has no authority to investigate charges, written or unwritten, made against any member of the unclassified service.

4. The Civil Service Commission has no authority to investigate the general conduct, operation or management of the various departments of the City government.

5. During an investigation into the administration of the classified civil service system, if the Civil Service Commission incidentally encounters misconduct, misbehavior or incompetency of any employee, it is appropriate for the Civil Service Commission to refer that matter to the concerned employee's appointing authority for further investigation and the preparation of written charges if necessary.

BACKGROUND

The Civil Service Commission recently received a voluminous document from Patrick J. Thistle, attorney at law, alleging a variety of charges. The document entitled "Petition for Hearing pursuant to Charter Section 128" contains the following statement:

This purpose of this petition is to bring forth information to the Civil Service Commission regarding the conduct of departments and sub-departments of the City which operates to the detriment of the proper administration of civil service and personnel rules. The specific conduct referred to in this petition is intended to portray examples of conduct which is encouraged and/or condoned in the handling of personnel matters in the City. Wherever possible, documentation and the names of witnesses are provided. (Sic)

Following that statement are a series of paragraphs numbered I through VIII which contain specific allegations of misconduct against specific members of the classified or unclassified service, allegations concerning the operation and efficiency of various departments of the City, and numerous other allegations and arguments charging that the various departments of The City of San Diego operate in such a way as to discriminate or retaliate against individuals who file discrimination and disability claims with The City of San Diego.

In order to substantiate the allegations contained in paragraphs I through VIII, Mr. Thistle also attached as a supporting document the personal diary of a retired, disabled police officer which covers a period between March 1980 and September 1981. In addition to describing her duties while in a

light-duty assignment, the diary contains numerous statements concerning the operation of the Police Department, particularly the office of the Chief of Police.

During a special meeting of the Civil Service Commission, the issue arose over the proper course and scope of the Commission's investigation into this matter. This opinion is in response to the Commission's questions concerning the scope of its authority to conduct investigations pursuant to Charter section 128.

ANALYSIS

Under the California Constitution, the charter of a city is the organic law of the city. *Hubbard v. City of San Diego*, 55 Cal.App.3d 380, 127 Cal.Rptr. 587 (1976). It is also fundamental

that a civil service commission has only the powers granted to it under the charter which created it. It may not exercise any power not directly given to it or necessarily implied from those conferred upon it. *Livingston v. MacGillivray*, 1 Cal.2d 546, 36 P.2d 622 (1934). In order to ascertain the meaning or the intent of various charter sections it is necessary to read them together with a view of harmonizing them. *Crow v. Boyle*, 184 Cal. 117, 193 P. 111 (1920). It is also clear that a commission has wide latitude to act as long as it is acting within the applicable provisions of the charter and in consonance with the fundamental principles involved. *Bruce v. Civil Service Board*, 6 Cal.App.2d 633 (1935), *Chavez v. Civil Service Com.*, 86 Cal.App.3d 324, 150 Cal.Rptr. 197 (1978).

In resolving this issue of jurisdiction, we first look to the wording of the Charter of The City of San Diego for guidance. The applicable provisions of the Charter read as follows:

ARTICLE VIII

CIVIL SERVICE

SECTION 115. CIVIL SERVICE COMMISSION.

This Commission shall have supervision over the selection, promotion and removal of all employees of the City subject to the Civil Service provisions of this Charter.

SECTION 128. INVESTIGATIONS.

The City Council, the Civil Service Commission, the City Manager, the Personnel

Director or any persons designated by any of them, may make investigations concerning the facts in respect to the operation and enforcement of the Civil Service provisions of this Charter and of the rules established thereunder, and concerning the condition of the Civil Service of the City or any branch thereof. Written charges of misconduct or inefficiency against any officer or employee in the classified service may be filed with the Personnel Director by any person. The Commission shall investigate any such charges, or cause them to be investigated, and report the findings of the investigation to the authority responsible for the appointment of the officer or employee against whom the charges have been made. Any person or persons, making an investigation authorized or

required by this Section, shall have power to subpoena and require the attendance of witnesses and the production of books and papers pertinent to the investigation and to administer oaths to such witnesses. Provided, however, that in the event of more than one investigation concerning the same person or the same subject or matter or matters closely allied thereto, then and in that event but one hearing shall be had and the entire matter shall be disposed of in the one hearing. (Emphasis added.)

ARTICLE V

EXECUTIVE AND ADMINISTRATIVE SERVICE

SECTION 28. DUTIES OF THE MANAGER.

It shall be the duty of the Manager to supervise the administration of the affairs of the City except as otherwise specifically provided in this Charter; to make such recommendation to the Council concerning the affairs of the City as may seem to him desirable; ... Except as otherwise provided in this Charter, all other administrative powers conferred by the laws of the State upon any municipal official shall be exercised by the Manager or persons designated by him. ... The

Manager may prescribe such general rules and regulations as he may deem necessary or expedient for the general conduct of the administrative Departments. The Director of each Department shall in like manner prescribe such rules and regulations as may be deemed necessary and expedient for the proper conduct of each Department, not inconsistent with the general rules and regulations prescribed by the Manager.

SECTION 30. REMOVAL OF UNCLASSIFIED OFFICERS AND EMPLOYEES.

Officers and employees in the unclassified service appointed by the Manager or other appointing authority not under control of the Manager may be removed by such appointing authority at any time.

SECTION 37. PERSONNEL DIRECTOR.

The Personnel Director shall be appointed by the Civil Service Commission and shall have all powers and perform all duties prescribed for such Personnel Director in Section 116 of Article VIII. In addition thereto he shall exercise general supervision over the employment policy of the city, subject to the Civil Service provisions of this Charter and the directions of the Civil Service Commission. He shall keep a record of the personnel conditions in the City service and shall, upon the request of the Manager or of the Civil Service Commission, or on his own initiative, investigate problems relating to the securing of a better class of applicants for positions, and to the maintenance of efficiency among City Employees, and to any and all other matters relating to his department as may properly come before him. (Emphasis added.)

The Personnel Director, with the approval of the Civil Service Commission and the Manager shall have jurisdiction to investigate working conditions of City service as they affect the health, welfare, efficiency, service and

esprit de corps of the employees. He shall be accessible to any employee who shall desire to complain of any matter incident to his employment. (Emphasis added.)

SECTION 57. POLICE DEPARTMENT

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....

The Chief of Police, with the approval of the City Manager, shall appoint, direct and supervise the personnel, subject to Civil Service regulations, have charge of the property and equipment of the department and exercise all powers and duties provided by general laws or by ordinance of the Council. The Chief of Police shall have all power and authority necessary for the operation and control of the Police Department. (Emphasis added.)

The Civil Service Commission is clearly not authorized by the

explicit language of section 128 to investigate charges, written or unwritten, against members of the unclassified service. In other words, the Commission simply lacks the power to conduct such investigations. *County of Alpine v. County of Toulumne*, 49 Cal.2d 787, 322 P.2d 449 (1958), *Wheeler v. City of Santa Ana*, 81 Cal.App.2d 811, 185 P.2d 373 (1947). It may, of course, review the performance of the Personnel Director at any time in its capacity as an appointing authority. Charter sections 30 and 37.

With that issue resolved, we now turn our attention to the broader powers of the Commission to investigate pursuant to the first sentence of Charter section 128, restated below for purposes of clarity.

The City Council, the Civil Service Commission, the City Manager, the Personnel Director or any persons designated by any of them may make investigations concerning the facts in respect to the operations and enforcement of the civil service provisions of this Charter and the rules established thereunder, and concerning the condition of the civil service of the City or any branch thereof. (Emphasis added.)

The present controversy over the scope of the Civil Service Commission's jurisdiction authorized by this language is not a new one. Over fifty years ago, this office provided the following guidance on this subject:

Certainly neither the Personnel Director, nor the Civil Service Commission, nor any individual member of the Commission is by the Charter given authority or jurisdiction to investigate with or without the expenditure of money, legal matters, engineering problems, enforcement of contract provisions, vice conditions, personal affairs of City officials, administrative matters affecting the City Manager's responsibility, or compliance with specifications on the part of a contractor making sales to The City of San Diego. These and all similar matters are wholly without the jurisdiction, and are no concern whatever of the Civil Service Commission or the Personnel Director.

Opinion dated April 21, 1933, prepared by Deputy City Attorney H.B. Daniel.

Thirty years later, the Supreme Court of the state of Washington adopted a similar view of the jurisdiction of another civil service commission in the case of *Patton v. Wheelon*, 65 Wash.2d 320, 96 P.2d 985 (1964). That case arose when the Civil Service Commission of the City of Seattle was asked to investigate charges that two unidentified police officers conducted in an illegal search. Relying on section 14 of the Seattle City Charter, which imposed upon the Commission the duty to investigate the administration of the Civil Service articles, the appellants demanded that the Commission comply with the request. The Supreme Court of Washington held that under the Seattle Charter the Civil Service Commission was not a supervisory or reviewing agency unless the action under investigation or scrutiny affected the administration of the civil service system, but it had both the power and the duty to investigate any violations of the Charter, city ordinances and the Commissions' rules and regulations directly pertaining to the administration of the classified civil service system.

The Civil Service Commission, in conducting lawful investigations into accusations of favoritism or arbitrary or invidious discrimination among similarly situated employees or

other violations of the civil service rules and regulations, may in fact encounter acts of misconduct, misbehavior by any employee, classified or unclassified, but this in no way enlarges or limits its powers and duties. *City of Knoxville v. Civil Service Merit Bd.*, 705 S.W.2d 674 (Tenn. 1985), *Patton v. Wheelon*, 65 Wash.2d at 325. Such matters should be referred to the concerned employee's appointing authority for further investigation and the preparation of written charges if appropriate.

The Civil Service Commission has long recognized the limits of its authority to supervise and/or direct the managerial functions of the various City departments in the development and implementation of its own grievance procedures as set forth in the Personnel Manual (Index Code K-1). As Index Code K-1 indicates, misunderstandings, differences of interpretations or violations of the Civil Service Rules; San Diego Municipal Code, chapter II, article 3, section 23.0101 and the Personnel Manual are clearly within the jurisdiction of the Civil Service Commission to investigate. On the other hand, the Commission has no authority under the first sentence of section 128 of the Charter to investigate alleged violations of rules established pursuant to the authority of the Manager under Charter section 28. When, as in the present case, written charges against

specific members of the classified service have been delivered to the Personnel Director in accordance with the provisions of the second sentence of Charter section 128, the Commission certainly has jurisdiction to investigate. However, this authority to investigate should not be confused with the broad investigatory powers of the Grand Jury pursuant to California Penal Code section 888 et seq. or the powers normally associated with civilian review boards. *City of Newark v. Benjamin*, 144 N.J. Super. 58, 364 A.2d 563 (1976), *Krenan v. City of New York*, 315 N.Y.S.2d 74 (1970), *Cassese v. Lindsay*, 272 N.Y.S.2d 324 (1966).

The Commission should also be aware of the extent of its responsibility to investigate pursuant to Charter section 128. A key difference between the Commissioners duty to investigate pursuant to the first sentence of Charter section 128, as opposed to the second sentence, is the use of the word "may" in the first sentence and "shall" in the second. The Commission therefor has the discretionary duty to investigate facts surrounding the operation and enforcement of the civil service system and a mandatory duty to investigate written charges against members of the classified service once they are filed with the Personnel Director. *Mahdavi v. Fair Employment Practice Com.*, 67 Cal.App.3d 326, 136 Cal.Rptr. 421 (1977).

SUMMARY

In summary, we believe that the Civil Service Commission has the authority to investigate or hold hearings concerning the operations of the civil service of The City of San Diego as encompassed by Charter sections 115-139; Rules I through XVII of the Civil Service Commission; San Diego Municipal Code, chapter II, article 3, section 23.0101 et seq.; and the regulations promulgated in the Personnel Manual of The City of San Diego. It does not have the authority to investigate the operational responsibilities of the various departments of The City of San Diego except to the extent that they may involve the implementation or enforcement of the civil service system. The Commission has no authority to investigate charges written or unwritten against a member of the unclassified service and, prior

to investigating any member of the classified service, the Commission must have before it, as it does in this case, written charges against that employee.

Respectfully submitted,
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By
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APPROVED:

JOHN W. WITT

City Attorney